

FILED
IN CLERKS OFFICE

UNITED STATES DISTRICT COURT

for the

2022 CV 10244 LTS

SAMMY CISNEROS

Petitioner

v.

Case No.

(Supplied by Clerk of Court)

Amy BONCHER, Warden

Respondent

(name of warden or authorized person having custody of petitioner)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Sammy Cisneros
 (b) Other names you have used: N/A
2. Place of confinement:
 (a) Name of institution: Federal Medical Center Devens
 (b) Address: P.O. Box 879
Ayer, MA 01432
 (c) Your identification number: 14307-273
3. Are you currently being held on orders by:
 Federal authorities State authorities Other - explain:
 If you are currently serving a sentence, provide:
 (a) Name and location of court that sentenced you: U.S. District Court District
of South Dakota, Western Division
 (b) Docket number of criminal case: 5:15CR 50016-2
 (c) Date of sentencing: 06-01-2018
- Being held on an immigration charge
 Other (explain):

Decision or Action You Are Challenging

5. What are you challenging in this petition:
 How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

- Pretrial detention
 Immigration detention
 Detainer
 The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
 Disciplinary proceedings
 Other (explain): _____

6. Provide more information about the decision or action you are challenging:

- (a) Name and location of the agency or court: Federal Bureau of Prisons, Central Office, Washington, DC.
- (b) Docket number, case number, or opinion number: Remedy ID #: 1032568-A1
- (c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):
Denial of credit for time served in pre sentence confinement.
- (d) Date of the decision or action: April 26, 2021

Your Earlier Challenges of the Decision or Action

7. First appeal

Did you appeal the decision, file a grievance, or seek an administrative remedy?

- Yes No

(a) If "Yes," provide:

- (1) Name of the authority, agency, or court: Federal Bureau of Prisons,
- (2) Date of filing: August 6, 2020
- (3) Docket number, case number, or opinion number: 1032568-A1
- (4) Result: Denied credit for time served
- (5) Date of result: April 26, 2021
- (6) Issues raised: Request for credit for time served while in pre sentence confinement.

(b) If you answered "No," explain why you did not appeal:

N/A

8. Second appeal

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

- Yes No

'AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9.

Third appeal

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: _____

10.

Motion under 28 U.S.C. § 2255

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes No

'AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

If "Yes," provide:

- (1) Name of court: _____
(2) Case number: _____
(3) Date of filing: _____
(4) Result: _____
(5) Date of result: _____
(6) Issues raised: _____

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

Yes No

If "Yes," provide:

- (1) Name of court: _____
(2) Case number: _____
(3) Date of filing: _____
(4) Result: _____
(5) Date of result: _____
(6) Issues raised: _____

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: N/A

11.

Appeals of immigration proceedings

Does this case concern immigration proceedings?

Yes No

If "Yes," provide:

- (a) Date you were taken into immigration custody: _____
(b) Date of the removal or reinstatement order: _____
(c) Did you file an appeal with the Board of Immigration Appeals? _____

Yes No

If "Yes," provide:

- (1) Date of filing: _____
(2) Case number: _____
(3) Result: _____
(4) Date of result: _____
(5) Issues raised: _____

(d) Did you appeal the decision to the United States Court of Appeals?

Yes No

If "Yes," provide:

- (1) Name of court: _____
(2) Date of filing: _____
(3) Case number: _____
(4) Result: _____
(5) Date of result: _____
(6) Issues raised: _____

12.

Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes No

If "Yes," provide:

- (a) Kind of petition, motion, or application: _____
(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____
(d) Docket number, case number, or opinion number: _____
(e) Result: _____
(f) Date of result: _____
(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: *Petitioner is being deprived of his liberty by Respondent's failure to give the Petitioner earned jail time credit for the time Petitioner served while in federal custody.*

- (a) Supporting facts (Be brief. Do not cite cases or law.):

(See attached motion (8 pages) and exhibits).

- (b) Did you present Ground One in all appeals that were available to you?

Yes No

GROUND TWO:

- (a) Supporting facts (Be brief. Do not cite cases or law.):

- (b) Did you present Ground Two in all appeals that were available to you?

Yes No

GROUND THREE:

- (a) Supporting facts (Be brief. Do not cite cases or law.):

- (b) Did you present Ground Three in all appeals that were available to you?

Yes No

FILED
IN CLERKS OFFICE

In The United States District Court MAR -9 AM 11:41
For the District of Massachusetts

U.S. DISTRICT COURT
DISTRICT OF MASS.

Sammy Cisneros,
Petitioner/Defendant

v.

CASE NO. _____

Warden Amy Boncher
Respondent

Motion Pursuant to 28 U.S.C. § 2241

Comes now, Sammy Cisneros (hereinafter known as "Petitioner"), pro se,
a Federal prisoner incarcerated at FMC-Devens, challenging the
FBOp's "Computation of [Cisneros's] Sentence," and offers the
following facts and argument in support.

Jurisdiction

Cisneros is a Federal prisoner incarcerated at FMC-Devens within
the District of Massachusetts, who has completed all available remedies.

Relevant Facts

1. On 12/12/2014, Petitioner was arrested for dist-

ribution of a controlled substance and possession of an un-

registered firearm. Petitioner was released on bond by

the Bureau of Indian Affairs.

2. On 12/29/2014, after the service of a search

warrant on Petitioner's home, FBI agents arrested the

Petitioner on possession of burglary tool. Federal Prosec-

utors deferred prosecution and the case was turned over

to state prosecutors for prosecution. Petitioner was, at that

point, under state custody awaiting prosecution.

3. On 01/30/2015, Petitioner was granted bail and posted

bond for the state case, unknown to petitioner was federal

authorities had called the jail and requested petitioner be

detained/held. Petitioner was not released and was detained/held

Under federal jurisdiction pending federal prosecution.

4. On 06/01/2018, petitioner was sentenced in Federal Court for Distribution of a Controlled Substance and Possession of an unregistered firearm. Petitioner began serving his Federal Sentence, under federal custody.

5. On 07/18/2018, Petitioner was transported to the Jefferson County Courthouse in Colorado by the U.S. Marshalls. Petitioner entered into a plea agreement where as a condition the Court would run any sentence imposed concurrent with Petitioner's Federal Sentence. Petitioner plead guilty and was given a 3-year sentence for possession of a burglary tool (sheaved key) and the U.S. Marshals returned the Petitioner where he was serving his federal sentence.

6. In April 2021, petitioner noted in his annual BOP

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Review a discrepancy in his projected release date.

Petitioner argued he was not given jail credit time towards

his federal sentence, which he argued began when

he was detained by federal authorities on 01/30/2015.

Subsequently, petitioner's Case Manager requested Grand

Praire investigate the matter.

7. on 08/17/2020, Grand Praire responded to petitioner's

inquiries inquiring the federal Court's silence regarding con-

secutive or concurrent sentences meant the defendant would

be consecutive.

8. on 05/27/2021, Petitioner completed the

administrative remedies process (Attached Exhibit-A

(BP-1) and associated documents).

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Argument

Section 2241. Petitions are available to inmates who are

"in custody under or by color of the authority of the United States..."

28 U.S.C. § 2241(c)(1). Petitions brought under "§ 2241 generally

challenge[s] the execution of a federal prisoner's sentence, including

such matters as... computation of a prisoner's sentence by

prison officials... Thornton v. Sabol, 620 F. Supp. 2d 203, 206

(D. Mass. 2009). "A petition under § 2241 must be brought in the

district where the prisoner is incarcerated, and must follow

exhaustion of all available federal administrative remedies.

Carter v. Grandolesky, 2014 U.S. Dist. Lexis 178303 (D. Mass.

Dec. 30, 2014).

Discussion

I. Primary Jurisdiction:

"Under the primary jurisdiction doctrine '[t]he first sovereign

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to take physical custody of a defendant retaining 'primary jurisdiction' until releasing that jurisdiction." E/well v.

Fisher, 716 F.3d 477, 481 (8th Cir. 2013). Generally, a sovereign

can relinquish primary jurisdiction in one of four ways:

(1) release on bail, (2) dismissal of charges, (3) parole, or (4) expiration of sentence" Id. (emphasis added) Finally,

'[a] defendant sentenced by both a state and federal

sovereign will first serve the sentence of the sovereign

with primary jurisdiction.' Thomas v. Warden, Fed. Corr.

Inst, 2015 U.S. Dist. Lexis 13868 (D.N.H. Feb. 5, 2015)

(citing United States v. Warren, 610 F.2d 680, 684 (9th Cir. 1980...)"

Lewis v. Warden, 2018 U.S. Dist. Lexis 30372 (D.N.H. Jan. 30, 2018).

Petitioner argues Federal authorities obtained "primary

"jurisdiction" on 01/30/2015, after he was placed under

"federal arrest" (see Exhibit-A, Pg. 5) and after posting bail

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for the State charges. Thus, petitioner should receive all jail time credits, being withheld by the FBOP, towards his federal sentence due to federal authorities obtaining primary jurisdiction on 01/30/2015.

In accordance with the law Petitioner must "first serve the sentence of the sovereign with primary jurisdiction." Warren, 610 F.2d at 684. Upon the completion of petitioner's Federal Sentence in March 2021*, petitioner will not be detained or be turned over to the Colorado Dept. of Corrections, because Judge Tamara S. Russell ordered petitioner's "sentence is concurrent with any other sentence Deft. is currently including The Fed. Bureau of Prisons." (Exhibit A - page 4).

Wherefore, Petitioner Sammy Cisneros respectfully requests this Honorable Court find Cisnero's was under federal primary

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jurisdiction on 01/30/2015 and never relinquished jurisdiction
and the Bureau of Prisons return/credit all jail good time
from that date, minus time taken to Sentence Cisneros in the
State. Rule Cisneros's federal Sentence is to be run/started
first and any state sentence be imposed after.

I, Sammy Cisneros, do hereby declare under the penalty of perjury,
pursuant to 28 USC § 1746, the foregoing facts represented in his
Habeas Petition are true and correct.

Respectfully Submitted,

Dated: 1-19-, 2022.

Sammy Cisneros
Sammy Cisneros, pro se
Federal Medical Center Devens
P.O. Box 879
Ayer, MA 01432

GROUND FOUR:

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Four in all appeals that were available to you?

Yes No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do:

Petitioner wants credit for the time petitioner served while in federal custody (both pre-trial and post trial) applied to his federal sentence.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 1-19-22


Fanny Lee

Signature of Petitioner

Signature of Attorney or other authorized person, if any